

1 U.S. DISTRICT COURT
2
3 NORTHERN DISTRICT OF CALIFORNIA
4
5 OAKLAND DIVISION

6 ELASTICSEARCH, INC., a) Volume 2
7 Delaware corporation,)
8 ELASTICSEARCH B.V., a)
9 Dutch corporation,)
10) Case No.
11 Plaintiffs,) 4:19-cv-05553-YGR
12)
13 vs.)
14)
15 Floragunn GmbH, a German)
16 corporation,)
17)
18 Defendant.)
19)
20 *** HIGHLY CONFIDENTIAL ***
21 *** UNDER PROTECTIVE ORDER ***
22 *** ATTORNEY'S EYES ONLY ***

23
24
25 REMOTE VIDEOTAPED DEPOSITION
17
18 OF
19 30(b)(6) CORPORATE REPRESENTATIVE
20 JOCHEN MICHAEL KRESSIN
21 Tuesday, March 9, 2021
22 Berlin, Germany

23
24
25 Reported by: B. Suzanne Hull, CSR No. 13495

1	MR. KWUN: Oh, I'm sorry.	16:44:48
2	THE VIDEOGRAPHER: -- unmute.	16:44:50
3	We're going off the record.	16:44:52
4	The time is 4:44.	16:44:54
5	(Short recess taken.)	16:44:57
6	THE VIDEOGRAPHER: We're back on the record.	16:52:00
7	The time is 4:52.	16:52:01
8	BY MR. EBERHART:	16:52:06
9	Q. Mr. Kressin, are you able to answer the	16:52:07
10	question or are you going to decline to answer?	16:52:09
11	A. No. I am able to answer the question.	16:52:11
12	So there is one agreement with a company	16:52:13
13	called Nagravision. It is a company that	16:52:16
14	manufactures, to the best of my knowledge, boxes for	16:52:22
15	TVs. There is one agreement with a company in	16:52:26
16	Germany called Würth Phoenix, and there is an OEM	16:52:28
17	agreement with a company from Ireland called	16:52:36
18	Siren Solutions.	16:52:39
19	Q. And do any of those companies offer products	16:52:40
20	or services to U.S. companies?	16:52:44
21	MR. KWUN: Objection. Calls for	16:52:50
22	speculation.	16:52:54
23	THE WITNESS: I do not know.	16:52:55
24	BY MR. EBERHART:	16:52:56
25	Q. With respect to Nagravision, into what	16:53:01

1	products or services was Search Guard code	16:53:05
2	integrated?	16:53:09
3	MR. KWUN: Objection. Lacks foundation.	16:53:10
4	Calls for speculation.	16:53:11
5	THE WITNESS: I don't have that information	16:53:12
6	available.	16:53:14
7	BY MR. EBERHART:	16:53:16
8	Q. Could you spell the second company you --	16:53:17
9	you referenced?	16:53:20
10	A. It is W-ü-r-t-h, that is one word. And then	16:53:21
11	Phoenix, like the Phoenix, the bird.	16:53:33
12	Q. Into what products or services did	16:53:38
13	Würth Phoenix integrate Search Guard code?	16:53:44
14	A. To my knowledge, it is a product called	16:53:50
15	NetEye.	16:53:53
16	Q. Can you spell that, please.	16:53:54
17	A. N-e-t-E-y-e. It is one word. N -- capital	16:53:56
18	N-e -- capital.	16:54:03
19	Q. Into what products or services did	16:54:03
20	Siren Solutions integrate Search Guard code?	16:54:07
21	A. To the best of my knowledge -- oh, I'm --	16:54:11
22	I'm -- I'm sorry. Maybe I didn't understand the	16:54:13
23	question.	16:54:16
24	Is the question they integrated Search Guard	16:54:17
25	code, like source code?	16:54:19

1 Search Guard on the Pivotal Cloud Foundry platform. 17:03:12

2 Q. Was there ever an agreement between 17:03:19

3 floragunn and Pivotal Cloud Foundry regarding 17:03:21

4 Search Guard? 17:03:26

5 A. No. 17:03:27

6 Q. And what was the integration by Mitraceh 17:03:27

7 TeamConnect with respect to Search Guard? 17:03:31

8 A. That one is the same. I don't remember the 17:03:35

9 exact -- the exact context, but there was information 17:03:37

10 about Mitraceh TeamConnect and how to use and 17:03:40

11 conceal Search Guard in connection with that product. 17:03:48

12 Q. And similarly, there -- withdrawn. 17:03:49

13 Was there ever any agreement between 17:03:53

14 floragunn and Mitraceh regarding Search Guard? 17:03:57

15 A. No. 17:03:59

16 Q. What source code control systems has 17:04:00

17 floragunn used for its business? 17:04:08

18 A. Sorry. The audio was bad. I didn't get the 17:04:11

19 question. Sorry. 17:04:14

20 Q. What source code control systems has 17:04:15

21 floragunn used for its business? 17:04:18

22 A. GitHub and GitLab. 17:04:20

23 Q. And during what period did floragunn use 17:04:22

24 GitHub? 17:04:26

25 A. Floragunn used GitHub since at least 2015, 17:04:26

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1 and it stopped using GitHub in 2019 due to the 17:04:35
2 effects of the DMCA takedown of this litigation. 17:04:40
3 Q. During what period has floragunn used 17:04:47
4 GitLab? 17:04:50
5 A. From approximately end of 2019 until now. 17:04:51
6 Q. Has floragunn ever used any bug tracking 17:04:57
7 system or systems in the course of its business? 17:05:04
8 A. We use the GitHub issued tracking system; so 17:05:07
9 there is a possibility of users just opening issues 17:05:14
10 on -- on GitHub. We used a product called Jira, 17:05:18
11 J-i-r-a, for tracking issues. And there is one 17:05:26
12 system. It is called Service Desk. That is for 17:05:35
13 tracking customer-related bugs. 17:05:39
14 Q. During what period did floragunn use Jira 17:05:41
15 for bug tracking? 17:05:51
16 A. As far as I remember, we started using Jira 17:05:52
17 probably around 2'16, 2'17. We occasionally use it 17:06:00
18 today, but today we also use the issue tracker system 17:06:09
19 of GitLab, which is -- which is kind of similar to 17:06:17
20 what GitHub offers regarding tracking issues and 17:06:22
21 bugs. 17:06:27
22 Q. And during what period did floragunn use bug 17:06:28
23 tracking in Service Desk? 17:06:36
24 A. To the best of my knowledge, somewhere 17:06:38
25 around 2'16, 2'17, and it is still used today. 17:06:43

1 BY MR. EBERHART: 17:58:40

2 Q. But it is your opinion that if Elastic code 17:58:42

3 is trivial, floragunn can use that code by copying it 17:58:47

4 into floragunn's product; correct? 17:58:52

5 MR. KWUN: Objection. Incomplete 17:58:54

6 hypothetical. 17:58:55

7 THE WITNESS: No. 17:58:58

8 That is -- that is -- that is not what I -- 17:58:58

9 what I meant because the question is always if it 17:59:01

10 is -- if it is an original expression or not. That 17:59:05

11 is, in my opinion, one -- one criteria. If in any -- 17:59:10

12 in any code there is -- there is very, very trivial 17:59:18

13 code, then what I want to say is that chances are 17:59:25

14 high that someone will come up with the very same 17:59:28

15 code. 17:59:31

16 BY MR. EBERHART: 17:59:33

17 Q. Take a look at Exhibit 174, please. It is 17:59:36

18 in the marked exhibits folder. 17:59:40

19 A. (Witness complies.) 17:59:49

20 174? 17:59:54

21 Q. Yes. 17:59:57

22 A. Okay. It is loading. 17:59:57

23 Okay. I have it in front of me. 18:00:02

24 Q. Please turn to paragraph twenty-nine. 18:00:04

25 A. I see it. 18:00:13

1 Q. Did the person who committed the code that 18:00:15
2 begins on line twenty-three and a half of page seven 18:00:23
3 and runs through line eleven of page eight have 18:00:29
4 access to the code immediately above it that is from 18:00:34
5 lines eight through twenty-one of page seven before 18:00:40
6 they committed the floragunn code shown at lines 18:00:44
7 twenty-three and a half on page seven to line eleven 18:00:48
8 on page eight? 18:00:53

9 MR. KWUN: Objection. Calls for a legal 18:00:55
10 conclusion and vague and ambiguous. 18:00:59

11 THE WITNESS: I -- well, I mean, I don't 18:01:06
12 know if this person would have had access before he 18:01:12
13 or she committed the code in twenty-two and a half; 18:01:16
14 so he or she would have access before -- to that code 18:01:21
15 before that. I mean, what I -- I can just speculate 18:01:26
16 from what is written in the claim, and the claim 18:01:32
17 states that this, quote, is -- is from -- from -- 18:01:34
18 from -- from X-Pack and the claim also states that 18:01:40
19 this code had been made open by -- by Elastic; so if 18:01:46
20 that is a true statement, if that code was available 18:01:51
21 at that point in time, then, in theory, a person 18:01:54
22 could have accessed that code before committing, you 18:01:58
23 know, the code. 18:02:03

24 BY MR. EBERHART: 18:02:04

25 Q. Before committing the code in lines 18:02:06

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1 twenty-two and a half on page seven through line 18:02:09
2 eleven on page eight, did the person who committed 18:02:13
3 that code to Search Guard review the code that is 18:02:16
4 shown on lines eight through twenty-one of page 18:02:20
5 seven? 18:02:24

6 A. I do not know. 18:02:27

7 Q. What did you do to be able to answer that 18:02:28
8 question? 18:02:31

9 A. I asked the person who has committed that 18:02:33
10 code to Search Guard if there was anything that he or 18:02:38
11 she copied from the X-Pack code base. 18:02:42

12 Q. And who was that person? 18:02:48

13 A. That person was Hendrik Saly. 18:02:49

14 Q. When did you ask Mr. Saly that question? 18:02:52

15 A. That was in 2019, in September, when we 18:02:56
16 learned about that -- this -- this litigation. 18:03:00

17 Q. Did you ask Mr. Saly whether he reviewed the 18:03:03
18 code in paragraph twenty-nine, lines eight through 18:03:08
19 twenty-one? 18:03:13

20 A. I did not ask him that specific question. 18:03:15
21 I asked him the broader question if he had copied 18:03:18
22 anything from the Elastic code base. 18:03:22

23 Q. Turning in Exhibit 174 to paragraphs -- to 18:03:24
24 paragraph thirty-two. 18:03:41

25 Before committing the code in paragraph 18:03:48

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1 thirty-two, did the person who committed that code to 18:03:51
2 Search Guard review the code in paragraph thirty-one 18:03:55
3 of Exhibit 174? 18:04:00
4 A. I do not know. 18:04:04
5 Q. What did you do to be able to answer that 18:04:05
6 question? 18:04:09
7 A. I asked the person that committed this code 18:04:10
8 if he or she copied any X-Pack code into the 18:04:13
9 Search Guard code base. 18:04:19
10 Q. Who was the person who committed the code in 18:04:20
11 paragraph thirty-two? 18:04:23
12 A. That person was Hendrik Saly. 18:04:25
13 Q. And was this the conversation that you had 18:04:27
14 with Mr. Saly in 2019? 18:04:30
15 A. Yes. 18:04:33
16 That was the same conversation because the 18:04:34
17 two pieces of code refer -- they go together. 18:04:36
18 Q. And you did not specifically ask Mr. Saly 18:04:42
19 whether he reviewed the code in paragraph thirty-one 18:04:46
20 before committing the code in paragraph thirty-two; 18:04:50
21 correct? 18:04:53
22 A. I -- yes. 18:04:54
23 I asked him the broader question if he 18:04:55
24 copied anything from the Elasticsearch code base into 18:04:58
25 the Search Guard code base -- from the X-Pack code 18:05:01

1 base. Sorry. 18:05:05

2 Q. Other than asking Mr. Saly in 2019 whether 18:05:06

3 he reviewed the code in paragraph thirty-one before 18:05:21

4 committing the code in paragraph thirty-two, did you 18:05:27

5 do anything else to be able to answer that question? 18:05:30

6 A. I was looking at the Search Guard code 18:05:33

7 repositories to see if there was any other, let's 18:05:36

8 say, variation or a version of that particular 18:05:43

9 feature. 18:05:51

10 Q. In other words, you were looking in the 18:05:53

11 Search Guard code base to see if there was code 18:05:58

12 similar to the code that is in paragraph thirty-two; 18:06:01

13 correct? 18:06:04

14 A. I was looking into the Search Guard code 18:06:05

15 base in order to figure out whether there is any code 18:06:10

16 that is pre- -- or I say that -- that precedes that 18:06:13

17 particular piece of code. 18:06:18

18 Q. Did you find any code in the Search Guard 18:06:22

19 code base that preceded the code in paragraph 18:06:26

20 thirty-two and that was similar to the code in 18:06:32

21 paragraph thirty-two? 18:06:35

22 A. I found -- I found code that is not -- 18:06:37

23 again, it is a definition of similar, what it 18:06:44

24 actually means. But there is one -- I found one 18:06:47

25 version of the code where some aspects had already 18:06:51

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1 been introduced into the Search Guard code base 18:06:54
2 without implementing it in the exact way that is 18:06:58
3 shown here in the document. 18:07:03
4 Q. And where did you find that code? 18:07:04
5 A. I found that in one of the Search Guard 18:07:10
6 repositories -- code repositories. 18:07:14
7 Q. Do you recall which repository? 18:07:18
8 A. It was most likely in the Search Guard 18:07:21
9 module DLS/FLS repository. 18:07:28
10 Q. Do you recall which file you found that code 18:07:29
11 in? 18:07:32
12 A. Well, the file, it was -- if I remember 18:07:33
13 correctly and from a code point of view, it probably 18:07:38
14 makes sense what -- it was the same one that is 18:07:41
15 mentioned here; so this is the -- let me look that 18:07:43
16 up. What is the name of that code? The 18:07:49
17 filterLeafReader. 18:08:02
18 Q. And what are you reviewing to find that 18:08:02
19 information? 18:08:05
20 A. Sorry. The audio is bad. 18:08:06
21 Could you please repeat? 18:08:08
22 Q. What did you just review to find that 18:08:10
23 information? 18:08:12
24 A. I scrolled in the Exhibit 174. I scrolled 18:08:14
25 to the getLiveDocs() method in order to see if 18:08:19

1 I could recall what class of Search Guard that code 18:08:24
2 was in -- or is in. 18:08:30

3 Q. And the code that you have been testifying 18:08:32
4 about, was that the commit to Search Guard for that 18:08:36
5 file that existed immediately prior to the June 7th 18:08:40
6 change that committed the code shown in paragraph 18:08:45
7 thirty-two? 18:08:48

8 MR. KWUN: Objection. Vague and ambiguous. 18:08:50

9 THE WITNESS: Well, I don't -- I don't know 18:08:56
10 if it is the -- the exact same file, but I'm 18:09:00
11 referring to a version that was in the repository 18:09:03
12 before that particular commit in the claim has been 18:09:09
13 made on GitHub. 18:09:12

14 BY MR. EBERHART: 18:09:14

15 Q. And when you testified earlier that this 18:09:16
16 was -- that code was implementing this function in 18:09:19
17 a different way, what did you mean by that? 18:09:24

18 A. The major difference -- and, again, I don't 18:09:27
19 have the code in front of me; so I can only try to 18:09:32
20 get it from -- from memory; so my answer might not be 18:09:36
21 complete. But one of the changes -- one of the 18:09:41
22 differences is that the code that I have seen was 18:09:44
23 part of the constructor of this particular file and 18:09:47
24 not in the numDocs and getLiveDocs() method, as shown 18:09:53
25 here in the document. 18:10:03

1 Q. And did you reach the conclusion that the 18:10:04
2 code that you found in the constructor was the source 18:10:08
3 for what Mr. Saly implemented in paragraph 18:10:14
4 thirty-two? 18:10:18

5 A. I probably wouldn't call it a source, but it 18:10:20
6 was at least one of the previous versions of the code 18:10:26
7 in those paragraphs. 18:10:31

8 Q. Did you ever talk to Mr. Saly about whether 18:10:34
9 he used that constructor code to create the code that 18:10:41
10 is shown in paragraph thirty-two of Exhibit 174? 18:10:47

11 A. No. I did not talk with him about that 18:10:52
12 because before Mr. Saly went on sick leave, we 18:10:55
13 were -- or I was not aware of that fact. 18:11:01

14 Q. Turning to paragraph thirty-nine of 18:11:06
15 Exhibit 174. 18:11:15

16 A. Uh-huh. Yes. I see it. 18:11:20

17 Q. And thirty-eight. Let's actually start with 18:11:22
18 thirty-eight. 18:11:27

19 Before the person who committed paragraph 18:11:28
20 thirty-eight to Search Guard committed that code, did 18:11:31
21 that person review the code in paragraph thirty-nine 18:11:34
22 of Exhibit 174? 18:11:39

23 A. I do not know, but I do not think so. 18:11:42

24 Q. What did you do to be able to answer that 18:11:46
25 question today? 18:11:51

1 A. I asked Mr. Saly if he decompiled any X-Pack 18:11:53
2 sources in order to get code into the Search Guard 18:11:59
3 code base. 18:12:02
4 Q. And what did Mr. Saly tell you? 18:12:03
5 A. Mr. Saly told me that he cannot remember -- 18:12:07
6 no. Sorry. That is not what he told me. He told me 18:12:12
7 that he hasn't decompiled any Elasticsearch -- no. 18:12:15
8 Any -- any X-Pack code in order to get to some 18:12:19
9 information that leads to any Search Guard code. 18:12:24
10 Q. Did you ever ask -- 18:12:31
11 A. Can I correct my statement because it was -- 18:12:35
12 it was not 100 percent correct. 18:12:38
13 So Mr. Saly told me that he did not 18:12:39
14 decompile X-Pack object code. That is actually what 18:12:43
15 he told me. 18:12:47
16 Q. Did Mr. Saly ever tell you whether or not he 18:12:48
17 decompiled Shield object code? 18:12:51
18 A. Well, when we use the phrase X-Pack, 18:12:54
19 sometimes it also includes Shield because it is the 18:13:01
20 predecessor product of -- of -- of X-Pack, but no. 18:13:06
21 Mr. Saly said that he has not decompiled Shield 18:13:10
22 object code for any creation of Search Guard, no. 18:13:16
23 Q. Isn't it a fact that Mr. Saly told you that 18:13:20
24 he couldn't remember whether he had decompiled any 18:13:24
25 Shield object code? 18:13:28

1 A. Well, I don't -- I don't remember the exact 18:13:40
2 words that Mr. Saly used; so he couldn't remember if 18:13:42
3 he did; so in my opinion sitting here and today, 18:13:46
4 I think I remember that we talked about that, and 18:13:49
5 there was no decompilation process going on. 18:13:52

6 Q. Well, that was your conclusion from the 18:13:55
7 conversation. 18:13:58

8 But the words Mr. Saly used were that he 18:13:58
9 couldn't remember decompiling Shield binaries; 18:14:04
10 correct? 18:14:07

11 A. Well, again, sitting here and today, I don't 18:14:08
12 know if these were the exact words of Mr. Saly, but 18:14:13
13 it could -- could be that he used those words. 18:14:16

14 Q. Other than talking to Mr. Saly about 18:14:20
15 decompilation, did you do anything else to determine 18:14:26
16 whether the person who had committed the code in 18:14:30
17 paragraph thirty-eight had reviewed the code in 18:14:34
18 paragraph thirty-nine of Exhibit 174? 18:14:38

19 A. Well, in my opinion, the only way to review 18:14:42
20 that code would be by decompiling it and by asking 18:14:51
21 the question if a decompilation process was going on. 18:14:56
22 In my opinion, that includes the -- the review part; 18:15:00
23 so if one didn't decompile, one couldn't review the 18:15:04
24 code. 18:15:09

25 MR. EBERHART: Could you read back the 18:15:11

1 question, please. 18:15:14

2 (Requested portion of record read.) 18:15:15

3 THE WITNESS: I did not ask this specific 18:15:33

4 question if the person reviewed the code that is -- 18:15:35

5 that is mentioned here. I asked a broader question 18:15:39

6 if there was decompilation or not -- or not. 18:15:42

7 BY MR. EBERHART: 18:15:46

8 Q. Is Mr. Saly the person who committed the 18:15:50

9 code in paragraph thirty-eight of Exhibit 174? 18:15:54

10 A. Yes. 18:15:58

11 Q. Other than asking the broader question about 18:15:58

12 decompilation, did you ask Mr. Saly any other 18:16:12

13 questions -- withdrawn. 18:16:18

14 Other than asking the broad question about 18:16:20

15 decompilation to Mr. Saly, did you do anything else 18:16:23

16 to determine whether he had reviewed the code in 18:16:26

17 Exhibit 39 before committing the code in Exhibit 38 18:16:26

18 [sic]? 18:16:34

19 A. Apart from asking him the question if he had 18:16:34

20 reviewed the code, there was nothing more that I did 18:16:37

21 to determine that because, in my opinion, it is -- it 18:16:45

22 is not -- not possible without decompiling code. 18:16:49

23 Q. Taking a look at exhibit -- or sorry. 18:16:54

24 Paragraph forty-one, please. 18:16:59

25 A. Yes. 18:17:08

1	Q. Who committed the code in paragraph	18:17:09
2	forty-one?	18:17:12
3	A. This code was committed by Hendrik Saly.	18:17:13
4	Q. Before Mr. Saly committed the code in	18:17:15
5	paragraph forty-one, did he review the code in	18:17:19
6	paragraph forty-two of Exhibit 174?	18:17:22
7	A. I do not know if he reviewed the code in	18:17:26
8	paragraph forty-two before he committed the code	18:17:32
9	stated in paragraph forty-one.	18:17:35
10	Q. What did you do to be able to answer that	18:17:38
11	question?	18:17:40
12	A. I asked Mr. Saly if he had transferred any	18:17:42
13	X-Pack or Shield code into Search Guard by any means.	18:17:47
14	Q. And this is the same conversation that you	18:17:54
15	have testified about previously that took place in	18:17:56
16	2019?	18:17:59
17	A. Yes.	18:17:59
18	Because at that point when we learned about	18:18:00
19	the litigation, I talked with Mr. Saly about code,	18:18:02
20	which I believe is -- was created by him.	18:18:06
21	Q. And other than that conversation with	18:18:09
22	Mr. Saly in 2019, did you do anything else to	18:18:13
23	determine whether Mr. Saly reviewed the code in	18:18:18
24	paragraph forty-two before committing the code in	18:18:23
25	paragraph forty-one?	18:18:26

1 A. I did not ask him the specific question if 18:18:27
2 he reviewed the code mentioned in paragraph forty-two 18:18:29
3 before committing the code in forty-one. I was 18:18:33
4 asking him if there was any decompilation happening, 18:18:36
5 and -- because in order to review the code, one would 18:18:41
6 have to decompile the code. And so that is what 18:18:47
7 I did was ask the question. Sorry. 18:18:51

8 MR. EBERHART: Could you read back the 18:18:54
9 question, please. 18:18:56

10 18:18:57
11 THE WITNESS: Apart from talking to him and 18:19:17
12 asking him about that code, no. Because I don't 18:19:19
13 think there is any -- well, no. 18:19:23

14 BY MR. EBERHART: 18:19:27

15 Q. Turning to paragraphs forty-five and 18:19:32
16 forty-six, please. 18:19:35

17 18:19:39
18 Who committed the code in paragraph 18:19:42
19 forty-five of Exhibit 174? 18:19:46

20 A. Hendrik Saly committed the code. 18:19:48

21 Q. Did Mr. Saly review the code in paragraph 18:19:51
22 forty-six before committing the code in paragraph 18:19:54
23 forty-five of Exhibit 174? 18:19:57

24 A. I do not know if -- if he reviewed the code, 18:20:03
25 but for that code it is, in my personal opinion, 18:20:07
 unlikely that he did.

1 Q. Did Mr. -- why is that your personal 18:20:09
2 opinion? 18:20:14

3 A. My personal opinion of that particular piece 18:20:15
4 of code is that it is different -- forty-five and 18:20:18
5 forty-six is -- is different code. Some of the 18:20:23
6 structural similarities are just there because of 18:20:28
7 things that the programming language mandates; so for 18:20:34
8 example, the method name exceptionCaught, that is -- 18:20:39
9 has to be called exceptionCaught because this method 18:20:45
10 overrides a method from another class, and that is 18:20:48
11 where this @Override statement comes from. 18:20:52

12 The same is true with other statements here, 18:20:56
13 like protected and void. These are just two keywords 18:20:59
14 from the JAVA programming language. And when looking 18:21:03
15 at the actual code, it appears to me that the code is 18:21:07
16 substantially different in many places; so it doesn't 18:21:13
17 look to me at all as if this code in paragraph 18:21:18
18 forty-five was copied from the code that is shown in 18:21:23
19 forty-six. 18:21:29

20 Q. Did you ask Mr. Saly whether he reviewed the 18:21:30
21 code in paragraph forty-six before committing the 18:21:34
22 code in paragraph forty-five? 18:21:38

23 A. I did not ask him that explicit question. 18:21:41
24 I asked him the question if he decompiled -- if there 18:21:44
25 was any decompilation happening on his side, but 18:21:48

1 I didn't ask him that particular question. 18:21:52

2 Q. Did you do anything else to determine 18:21:54

3 whether Mr. Saly had reviewed the code in paragraph 18:21:59

4 forty-six before he committed the code in paragraph 18:22:05

5 forty-five? 18:22:10

6 A. Apart from asking him the question that 18:22:11

7 I mentioned before, there was nothing that I could do 18:22:15

8 to determine whether he reviewed that code or not. 18:22:19

9 Q. Turning to paragraph fifty of Exhibit 174. 18:22:23

10 Who committed that code? 18:22:31

11 A. I committed that code. 18:22:33

12 Q. Did you review the code in paragraph 18:22:34

13 fifty-one before committing the code in paragraph 18:22:39

14 fifty? 18:22:43

15 A. No. I did not. 18:22:43

16 Q. Did you review any documentation regarding 18:22:44

17 the bug fix to the X-Pack Kibana plugin that was 18:22:57

18 committed on April 4th, 2017, before you committed 18:23:02

19 the code in paragraph fifty? 18:23:06

20 A. I do not remember that -- reviewing that 18:23:10

21 particular piece of code that you are referring to. 18:23:15

22 Q. Do you remember reviewing any materials from 18:23:18

23 Elastic before you committed the code in exhibit 18:23:26

24 fifty -- in paragraph fifty of Exhibit 174? 18:23:31

25 A. No. 18:23:35

1 I do not think so because the -- the code in 18:23:35
2 number fifty is the continuation of previous code. 18:23:40
3 Q. By continuation of previous code, what do 18:23:46
4 you mean by that? 18:23:53
5 A. I mean that there was -- so if you look at 18:23:54
6 that particular piece of -- of -- of code, this 18:24:05
7 particular piece of code implements a very -- a very 18:24:07
8 common feature, which means that if you are looking 18:24:11
9 into an application and you are trying to access one 18:24:14
10 particular page on that application or Web page and 18:24:21
11 you need to first log in, then after login you -- 18:24:23
12 looking at the feature, the functionality would take 18:24:25
13 you to the exact page that you initially requested; 18:24:28
14 so that is the -- the basic functionality of -- of 18:24:31
15 that code. And it can be found in, you know, nearly 18:24:36
16 all Web applications -- applications you need to log 18:24:40
17 in. 18:24:45
18 Now, regarding that particular code in 18:24:46
19 line -- sorry. In paragraph fifty, this is kind of 18:24:49
20 the -- one of the last versions of that particular 18:24:53
21 feature, the redirection of the -- of the logging in. 18:24:57
22 There had been versions before that; so the -- the 18:25:04
23 previous versions lacked some of the things in -- 18:25:12
24 in -- in paragraph fifty, but this particular piece 18:25:17
25 of code had versions before that implemented the same 18:25:22

1 basic functionality. 18:25:28

2 Q. Turning to paragraph fifty-three of 18:25:31

3 Exhibit 174. 18:25:36

4 Who committed that code? 18:25:38

5 A. In order to answer that question because 18:25:40

6 I am not 100 percent sure, I will need to look at one 18:25:45

7 of the documents that I brought with me today. 18:25:50

8 Q. Okay. Why don't you go ahead and do that. 18:25:52

9 A. Should I use the paper one or -- 18:25:55

10 Q. Why don't we use -- why don't we use the 18:25:56

11 electronic one just so we have a clear record since 18:25:59

12 they have exhibit numbers on them. 18:26:03

13 So it will be either 185, 186, 187, or 188. 18:26:11

14 A. Okay. Can I download Exhibit 174 so I have 18:26:19

15 it? 18:26:24

16 Q. Yes, sir. 18:26:25

17 A. Just give me a second. Okay. It is 18:26:27

18 downloading. 18:26:34

19 Okay. So that is 174. I have downloaded 18:26:42

20 the file. 18:26:48

21 Q. It should be 174 you downloaded. 18:26:51

22 A. 174; right. 18:26:56

23 Okay. And now I have 185, quote, timeline 18:26:59

24 in front of me. And I just need to look up the 18:27:06

25 author of the code in fifty-three. Just give me 18:27:11

1 a second. 18:27:15

2 Fifty-three, that code was committed -- the 18:27:22

3 code was committed by Mikael Gustavsson. 18:27:26

4 Q. Before Mr. Gustavsson committed the code in 18:27:29

5 paragraph fifty-three, did he review the code in 18:27:32

6 paragraph fifty-four of Exhibit 174? 18:27:36

7 A. I haven't asked Mr. Gustavsson that specific 18:27:41

8 question. I asked him the broader question if he had 18:27:44

9 used any Elastic code in order to create his own 18:27:47

10 code; so I don't know the -- I cannot answer the 18:27:51

11 question if he did. But that was the question that 18:27:56

12 I asked him. 18:27:59

13 Q. Other than that conversation with 18:28:00

14 Mr. Gustavsson, did you do anything else to determine 18:28:14

15 whether Mr. Gustavsson reviewed the code in paragraph 18:28:18

16 fifty-four before committing the code in paragraph 18:28:22

17 fifty-three? 18:28:26

18 A. I just asked him the question if there was 18:28:29

19 any material that he -- from -- from the X-Pack code 18:28:33

20 that he copied in order to create his own work, and 18:28:37

21 then I was looking up the -- the origins of that -- 18:28:41

22 of that code, so to speak, in order to figure out 18:28:46

23 what was the reason that code was implemented. And 18:28:49

24 that was, if I remember correctly, a hint from an 18:28:54

25 independent security researcher which wrote us an 18:28:59

1 e-mail making us aware that we have a bug in our 18:29:04
2 software and detailing the exact steps -- nearly the 18:29:09
3 exact steps to fix it; so in my opinion, that's -- 18:29:16
4 that's the source of this -- of this code. 18:29:20

5 Q. Other than the steps you have described, did 18:29:22
6 you do anything else to determine whether 18:29:25
7 Mr. Gustavsson reviewed the code in paragraph 18:29:29
8 fifty-four before committing the code in paragraph 18:29:35
9 fifty-three? 18:29:38

10 A. Apart from those two steps, no. 18:29:40

11 Q. When did that conversation with 18:29:47
12 Mr. Gustavsson take place? 18:29:50

13 A. That happened at the time when the -- when 18:29:51
14 the complaint containing that particular piece of 18:29:57
15 code was made with -- was made available to us. 18:30:02

16 Q. Who committed the code in paragraph 18:30:10
17 fifty-six of Exhibit 174? 18:30:16

18 A. Fifty-six is code that Sergii -- 18:30:20
19 Sergii Bondarenko committed. 18:30:28

20 Q. Did Mr. Bondarenko review the code in 18:30:29
21 paragraph fifty-seven before committing the code in 18:30:33
22 paragraph fifty-six? 18:30:36

23 A. I do not know if Mr. Bondarenko reviewed the 18:30:38
24 code that is mentioned in fifty-six. I asked 18:30:43
25 Mr. Bondarenko if he had copied any of the X-Pack 18:30:46

1 code in order to create his own work. 18:30:49

2 Q. Other than asking Mr. Bondarenko whether he 18:30:53

3 copied the X-Pack code, did you do anything else to 18:30:56

4 determine whether he reviewed the code in paragraph 18:31:00

5 fifty-seven before committing the code in paragraph 18:31:05

6 fifty-six? 18:31:08

7 A. Apart from explicitly asking him if he 18:31:10

8 copied code from X-Pack, there was nothing more that 18:31:15

9 I did to determine whether he reviewed the code in 18:31:20

10 fifty-seven. 18:31:23

11 Q. When did that conversation with 18:31:29

12 Mr. Bondarenko take place? 18:31:31

13 A. That was, if I remember correctly -- since 18:31:33

14 fifty-seven was, if I remember correctly, part of the 18:31:36

15 amended complaint, and I think the amended complaint 18:31:41

16 was filed in November 2019. That was around the time 18:31:44

17 when I spoke with Mr. Bondarenko. 18:31:51

18 Q. What did Mr. Bondarenko tell you about 18:31:52

19 whether he copied any Elastic code? 18:32:04

20 A. He told me that he did not copy Elastic code 18:32:08

21 in order to create his own code. 18:32:12

22 Q. And what did Mr. Gustavsson tell you about 18:32:15

23 whether he copied Elastic code? 18:32:23

24 A. Mr. Gustavsson told me that he had not 18:32:27

25 copied Elastic code. 18:32:29

1 Q. Looking at paragraph fifty-nine of 18:32:31
2 Exhibit 174, who committed that code to Search Guard? 18:32:36
3 A. Sergii Bondarenko committed the code in 18:32:40
4 paragraph fifty-nine. 18:32:43
5 Q. Did Mr. Bondarenko review the code in 18:32:45
6 paragraph sixty before committing the code in 18:32:48
7 paragraph fifty-nine? 18:32:51
8 A. I have no knowledge if Mr. Bondarenko 18:32:54
9 reviewed the code in sixty before committing the code 18:32:57
10 in fifty-nine. 18:33:00
11 Q. What did you determine -- withdrawn. 18:33:03
12 What did you do to prepare to testify on 18:33:05
13 whether Mr. Bondarenko reviewed the code in paragraph 18:33:09
14 sixty before committing the code in paragraph 18:33:13
15 fifty-nine? 18:33:16
16 A. I asked Mr. Bondarenko if there was any code 18:33:18
17 that he used or copied in order to -- sorry. Used or 18:33:22
18 copied from X-Pack in order to create his own work. 18:33:28
19 Q. Other than asking him that question, did you 18:33:32
20 do anything else to prepare to testify on whether 18:33:36
21 Mr. Bondarenko reviewed the code in paragraph sixty 18:33:41
22 before committing the code in paragraph fifty-nine? 18:33:48
23 A. Apart from asking him the questions, there 18:33:51
24 was nothing more to determine whether he reviewed the 18:33:56
25 code. 18:33:58

1 Q. So is that a no, there was nothing else you 18:34:02
2 did? 18:34:08

3 A. There was nothing else because I couldn't 18:34:08
4 think of any good way of technically figuring out 18:34:11
5 whether he ever reviewed that code. 18:34:15

6 Q. And this, again, was a conversation that you 18:34:17
7 had with Mr. Bondarenko in 2019; correct? 18:34:20

8 A. That was around the time the amended 18:34:23
9 complaint came out; so -- or was filed; so it was 18:34:27
10 most probably in end of 2019, yes. 18:34:31

11 MR. EBERHART: Why don't we take a short 18:34:33
12 break. 18:34:35

13 Let's go off the record. 18:34:35

14 THE VIDEOGRAPHER: Going off the record. 18:34:40

15 The time is 6:34. 18:34:41

16 (Short recess taken.) 18:49:01

17 THE VIDEOGRAPHER: We're back on the record. 18:49:01

18 The time is 6:49. 18:49:03

19 BY MR. EBERHART: 18:49:06

20 Q. Mr. Kressin, please take a look at 18:49:07
21 Exhibit 191, which is up on Exhibit Share. 18:49:09

22 (Deposition Exhibit Number 191 18:49:13
23 was marked for identification.) 18:49:14

24 THE WITNESS: Okay. It is still loading. 18:49:14

25 Uh-huh. Yes. I have it in front of me. 18:49:31

1 BY MR. EBERHART: 18:49:35

2 Q. What is Exhibit 191? 18:49:35

3 A. Exhibit 191 is a ticket from our ticket 18:49:37

4 system, and it looks to me that I created it. I am 18:49:44

5 mentioned as the reporter. And this is the -- this 18:49:49

6 seems to me as this is the e-mail that we got from an 18:49:56

7 independent penetration tester that found an issue in 18:50:01

8 our code that is connected with get -- the getNextUrl 18:50:08

9 code. 18:50:17

10 Q. And so Exhibit 119 includes the e-mail that 18:50:17

11 you testified about earlier today as being one of the 18:50:21

12 inputs that led to the floragunn code; correct? 18:50:25

13 A. Yeah. I can read we got the following 18:50:30

14 inquiry, and the format actually looks similar to the 18:50:33

15 format we would use on our Website content form; so 18:50:40

16 I would say this was submitted via our Website. 18:50:43

17 Q. Other than Exhibit 191, was there any other 18:50:46

18 e-mail that you were referring to -- withdrawn. 18:50:51

19 Other than Exhibit 191, was there some other 18:50:56

20 input from an independent security researcher that 18:50:59

21 corresponds to your testimony earlier today? 18:51:03

22 A. No. 18:51:10

23 MR. KWUN: Objection. Vague and ambiguous. 18:51:10

24 THE WITNESS: At least not that I remember. 18:51:14

25 ///

1 BY MR. EBERHART: 18:51:17

2 Q. Let me pull up Exhibit 177. 18:51:33

3 A. Ah, so sorry. I clicked on the wrong link. 18:51:54

4 177. 18:52:00

5 Q. Yes, sir. 18:52:01

6 A. Yes. Just one second. It is still loading. 18:52:02

7 Still loading. It is quite slow. 18:52:13

8 Okay. Now it is open. I have it in front 18:52:18

9 of me. 18:52:21

10 Q. Turn to paragraph twenty. 18:52:21

11 A. (Witness complies.) 18:52:25

12 Paragraph twenty, yes. 18:52:28

13 Q. Who committed the code to Search Guard that 18:52:31

14 is shown in paragraph twenty? 18:52:35

15 A. That code has been committed by 18:52:38

16 Hendrik Saly. 18:52:41

17 Q. Did Mr. Saly review the code in paragraph 18:52:43

18 twenty-one before committing the code in paragraph 18:52:46

19 twenty to Search Guard? 18:52:50

20 A. I do not know if Mr. Saly reviewed the code 18:52:52

21 in twenty-one before committing the code in twenty. 18:52:56

22 Q. Other than the conversation that you had 18:52:59

23 with Mr. Saly in 2019 that you have testified about 18:53:06

24 extensively today, did you do anything else to 18:53:11

25 determine whether Mr. Saly reviewed the code in 18:53:14

1 paragraph twenty-one before committing the code in 18:53:18
2 paragraph twenty? 18:53:21
3 A. I asked Mr. Saly about decompilation and if 18:53:24
4 he copied any code from Elastic to the Search Guard 18:53:28
5 code base. There was nothing more that I did to 18:53:31
6 figure out if he reviewed the code mentioned in 18:53:36
7 twenty-one. 18:53:39
8 Q. Turning to paragraph twenty-four, please. 18:53:40
9 A. Twenty-four? Yes. I see it. 18:53:52
10 Q. Who committed the code in paragraph 18:53:56
11 twenty-four to Search Guard? 18:53:58
12 A. I'm quite sure I did, yeah. 18:54:00
13 Q. Did you review the code in paragraph 18:54:03
14 twenty-five before committing the code in paragraph 18:54:06
15 twenty-four to Search Guard? 18:54:11
16 A. No. 18:54:13
17 Q. Turning to paragraph twenty-seven. 18:54:13
18 Who committed to Search Guard the code in 18:54:20
19 twenty -- paragraph twenty-seven? 18:54:30
20 A. I committed that code. 18:54:32
21 Q. Did you review the code in paragraph 18:54:33
22 twenty-eight before committing the code to 18:54:36
23 Search Guard in paragraph twenty-seven? 18:54:39
24 A. I did not review the code that is mentioned 18:54:41
25 in paragraph twenty-eight before committing the code 18:54:44

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1 in twenty-seven. 18:54:47

2 Q. Turning to paragraph thirty-one. 18:54:49

3 Who committed to Search Guard the code in 18:55:02
4 paragraph thirty-one? 18:55:05

5 A. Both of the code that is mentioned in 18:55:07
6 thirty-one was committed by Hendrik Saly. 18:55:13

7 Q. Did Mr. Saly review any of the code in 18:55:16
8 paragraph thirty-three before committing to 18:55:22
9 Search Guard the code in paragraph thirty-one? 18:55:27

10 MR. KWUN: Objection. Vague and ambiguous. 18:55:32

11 THE WITNESS: You said paragraph 18:55:36
12 thirty-three? 18:55:38

13 BY MR. EBERHART: 18:55:40

14 Q. Yes, sir. 18:55:41

15 A. So if the question is if Hendrik Saly 18:55:42
16 reviewed the code in thirty-three before committing 18:55:46
17 the code in thirty-one? 18:55:50

18 Q. Let me start again. That's -- that's not 18:55:52
19 a good question. 18:55:55

20 Did Mr. Saly review the code in paragraph 18:55:56
21 thirty-five before committing to Search Guard the 18:56:07
22 code in paragraph thirty-one? 18:56:11

23 A. I do not know if Mr. Saly reviewed the code 18:56:16
24 in thirty-five before committing the code mentioned 18:56:19
25 in thirty-one because that would mean that one would 18:56:23

1 need to decompile the code in order to review it. 18:56:29

2 Q. And other than the conversation that -- in 18:56:34

3 2019 that you had with Mr. Saly, did you do anything 18:56:37

4 else to determine whether he reviewed the code in 18:56:40

5 paragraph thirty-five before committing the code in 18:56:43

6 paragraph thirty-one? 18:56:46

7 A. Apart from asking him if there was 18:56:49

8 decompilation going on, if he copied some -- any code 18:56:52

9 from X-Pack to the Search Guard code base, there was 18:56:56

10 nothing more to determine if he reviewed the code 18:56:59

11 mentioned in thirty-five. 18:57:02

12 Q. So there was nothing else that you did; 18:57:04

13 correct? 18:57:09

14 A. Apart from the things that I had mentioned 18:57:09

15 before, there was nothing more, yes; correct. 18:57:12

16 Q. Who committed the code in paragraph 18:57:15

17 thirty-three of Exhibit 177? 18:57:17

18 A. Hendrik Saly committed the code in 18:57:24

19 thirty-three. 18:57:26

20 Q. Did Mr. Saly review the code in paragraph 18:57:28

21 thirty-five before committing the code in paragraph 18:57:31

22 thirty-three to Search Guard? 18:57:35

23 A. I don't know if Mr. Saly reviewed the code 18:57:37

24 mentioned in thirty-five before committing the code 18:57:40

25 in -- mentioned in thirty-three to Search Guard. 18:57:44

1 Q. And other than the conversations that you 18:57:46
2 have already tested about -- testified about today, 18:57:49
3 conversations that you had with Mr. Saly, did you do 18:57:53
4 anything else to determine whether he reviewed the 18:57:56
5 code in paragraph thirty-five before committing the 18:58:03
6 code in paragraph thirty-three? 18:58:06

7 A. Apart from asking him if there was any 18:58:09
8 decompilation going on, and apart from asking him if 18:58:10
9 he copied any X-Pack code into the -- into the 18:58:10
10 Search Guard code base, there was nothing more I did 18:58:14
11 to determine whether Mr. Saly reviewed the code 18:58:17
12 mentioned in thirty-five before committing the code 18:58:21
13 in thirty-three. 18:58:24

14 Q. Turning to paragraph thirty-six, please. 18:58:26

15 A. Thirty-six, okay. I see it. 18:58:36

16 Q. Did anyone decompile the code that was 18:58:39
17 listed at line nine and a half on page fourteen? 18:58:47

18 A. No. Not to my knowledge. 18:58:54

19 Q. Who committed the code in paragraph 18:58:56
20 thirty-nine of Exhibit 177? 18:59:10

21 A. That code was committed by Hendrik Saly. 18:59:13

22 Q. Did Mr. Saly review the code in paragraph 18:59:17
23 forty before committing to Search Guard the code in 18:59:21
24 paragraph thirty-nine? 18:59:25

25 A. I don't know if Mr. Saly reviewed the code 18:59:27

1	in paragraph forty before committing the code in	18:59:30
2	thirty-nine.	18:59:33
3	Q. Other than the conversations that you have	18:59:34
4	testified about with Mr. Saly, did you do anything to	18:59:37
5	determine whether Mr. Saly reviewed the code in	18:59:40
6	paragraph forty before committing the code in	18:59:45
7	paragraph thirty-nine?	18:59:47
8	A. Apart from the question if there had been	18:59:48
9	any decompilation going on and if Mr. Saly copied any	18:59:51
10	code from X-Pack to the Search Guard code base, there	18:59:56
11	was nothing more that I did to figure out whether	18:59:59
12	Mr. Saly had reviewed the code in paragraph forty	19:00:02
13	before committing the code in paragraph thirty-nine.	19:00:06
14	Q. Looking at paragraph forty-two, who	19:00:09
15	committed that code to Search Guard?	19:00:23
16	A. Hendrik Saly committed that code to	19:00:25
17	Search Guard.	19:00:28
18	Q. Did Mr. Saly review the code in paragraph	19:00:29
19	forty-three before committing to Search Guard the	19:00:32
20	code in paragraph forty-two?	19:00:35
21	A. I don't know if Mr. Saly reviewed the code	19:00:42
22	in forty-three before he committed the code mentioned	19:00:45
23	in forty-two.	19:00:48
24	Q. And other than the conversation with	19:00:49
25	Mr. Saly that you have testified about at length	19:00:51

1 today, did you do anything else to determine whether 19:00:55
2 Mr. Saly reviewed the code in paragraph forty-three 19:00:57
3 before committing the code in paragraph forty-two? 19:01:02
4 A. Apart from asking if there was any 19:01:05
5 decompilation going on and if he copied any code from 19:01:07
6 X-Pack to the Search Guard code base, there was no 19:01:13
7 action that I took personally in order to determine 19:01:14
8 whether Mr. Saly reviewed the code in paragraph 19:01:16
9 forty-three before he committed the code in paragraph 19:01:19
10 forty-two. 19:01:22
11 Q. Who committed the code in paragraph 19:01:24
12 forty-five of Exhibit 177? 19:01:28
13 A. Mikael Gustavsson committed the code in 19:01:31
14 paragraph forty-five. 19:01:34
15 Q. Did Mr. Gustavsson review the code in 19:01:35
16 paragraph forty-six before committing to Search Guard 19:01:40
17 the code in paragraph forty-five? 19:01:44
18 A. I am -- I don't know if he reviewed the code 19:01:47
19 in forty-six. 19:01:50
20 Q. And other than the conversations with 19:01:52
21 Mr. Gustavsson that you have testified about 19:01:55
22 previously today, did you do anything else to 19:01:57
23 determine whether Mr. Gustavsson reviewed the code in 19:02:00
24 paragraph forty-six before committing to Search Guard 19:02:05
25 the code in paragraph forty-five? 19:02:07

1 STATE OF CALIFORNIA)

2) ss.

3 COUNTY OF KERN)

4

5 I, B. Suzanne Hull, a Certified Shorthand
6 Reporter in the State of California, holding
7 Certificate Number 13495, do hereby certify that
8 JOCHEN MICHAEL KRESSIN, the witness named in the
9 foregoing deposition, was by me duly sworn; that said
10 deposition, was taken Tuesday, March 9, 2021, at the
11 time and place set forth on the first page hereof.

12 That upon the taking of the deposition, the
13 words of the witness were written down by me in
14 stenotypy and thereafter transcribed by computer
15 under my supervision; that the foregoing is a true
16 and correct transcript of the testimony given by the
17 witness.

18 Pursuant to Federal Rule 30(e), transcript
19 review was requested.

20 I further certify that I am neither counsel
21 for nor in any way related to any party to said
22 action, nor in any way interested in the result or
23 outcome thereof.

24 ///

25 ///

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Suzanne Hill

B. Suzanne Hull, CSR No. 13495